

REMARKS

Claims 1-26 and 51 are currently pending in the present application. Claims 27-50 have been cancelled without prejudice since they are directed towards non-elected subject matter. Only claims 1, 15, and 51 are in independent form.

Claims 1-26 and 51 have been rejected under 35 U.S.C. § 101 for being directed towards non-statutory subject matter. According to the Office Action, claims 1-14 amount to functional descriptive data. Additionally, claims 15-26 refer to software *per se* and recite a system that is not tangibly embodied to a computer system. Finally, claim 51 reflects a series of mental/manual steps and simply manipulates abstract ideas without practical application in a technological art. In response thereto, Applicants argue that the presently pending claims are directed towards statutory subject matter. However, in order to expedite the allowance of the present application, the presently pending independent claims have been amended in accordance with suggestions set forth in the Office Action. Specifically, the claims have been amended to set forth that the documentation system, software program, and documentation methods are utilized with a computer or computer processor. As a result of the amendments, reconsideration of the rejections is respectfully requested.

Claim 1, 3, 4, 6-9, 15-17, and 19-21 have been rejected under 35 U.S.C. § 112, first paragraph, for failing to comply with the enablement requirement. More specifically, the Office Action holds that the means claims do not appear in combination with another recited element. In response thereto, Applicant has set

forth in the specification and the claims (dependent claim 3) that the augmenting means is a software program. As a result and in contradiction to the Office Action, the augmenting means is defined as a software program. Reconsideration of the rejection is respectfully requested.

Claims 1-26 and 35 have been rejected under 35 U.S.C. § 112, second paragraph, for being indefinite. More specifically, the Office Action holds that the phrase “eliciting more accurate conclusions” is unclear. In response thereto, the presently pending claims have been amended by replacing the phrase “more accurate conclusions” with phrase “information for medical codes.” Support for such language can be found on Page 10, lines 2-7 of the specification. As a result, the presently pending claims are no longer indefinite and reconsideration of the rejection is respectfully requested.

Claims 7, 9, and 16 have been rejected for having improper Markush group language. In response thereto, these claims have been amended by deleting the term “essentially” from the claims. Reconsideration of the rejection is respectfully requested.

Claims 1-26 and 51 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,660,176A to Iliff (hereinafter, “the ‘176 patent”). According to the Office Action, the ‘176 patent discloses a system and method for providing computerized, knowledge-based medical diagnostic and treatment advice. The medical advice provided by the system and method is available to the general public over a telephone network. The system and method utilize authoring

languages, interactive voice response, and speech recognition.

As is well established, “[a]nticipation under 35 U.S.C. [§] 102 requires the disclosure in a single piece of prior art of each and every limitation of a claimed invention.” Apple Computer, Inc. v. Articulate Systems, Inc., 234 F.3d 14, 57 USPQ2d 1057 (Fed. Cir. 2000), citing, Electro Med. Sys. S.A. v. Cooper Life Sciences, 34 F.3d 1048, 32 USPQ2d 1017, 1019 (Fed. Cir. 1994)(emphasis added). Further, anticipation of the claims can be found only if a reference shows exactly what is claimed; where there are differences between the disclosures of the references and the claim, a rejection must be based on obviousness under Section 103. Titanium Metals Corp. v. Banner, 778 F.2d 775, 227 USPQ 773 (Fed.Cir. 1985). Additionally, “[f]or a prior art reference to anticipate in terms of 35 U.S.C. § 102, every element of the claimed invention must be identically shown in a single reference.” In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990)(emphasis added).

By way of background, the present invention is useful in providing clear, accurate, and complete documentation of patient encounters with health care providers. As is well known to those of skill in the art, any documentation of patient encounters must be done in a proper format and include certain criteria. The criteria or information regarding the patient encounter must accurately describe the medical history, diagnosis, assessment of problems, and treatment performed on the patient.

As a result, in order to receive proper patient care and payment reimbursement by third party payers, the present invention provides accurate medical coding through

the augmentation of clinician-entered information with predetermined criteria according to medical coding regulations.

Specifically referring to the presently claimed invention, the presently claimed invention differs from the '176 patent because the '176 patent does not specifically disclose the claimed invention of independent claims 1, 15, and 51. More specifically, the '176 patent does not disclose a clinician documentation system including an augmenting means for eliciting information for medical codes through the analysis of clinician-entered information and predetermined criteria input. Therefore, the prior art does not provide any system or method that augments clinician documentation to better comply with governmental regulatory coding regiments in order to classify the inpatient stay most appropriately to obtain the most correct payment.

As is well known, there are thousands of coding rules and some are dependent on specific information or verbiage the clinician uses to document the patient's condition and the clinician's observations and conclusions. The presently claimed invention uses augmenting means, such as algorithms, based on medical coding regulations and rules, as well as medical standards of care, for specific situations to be able to allow the clinician to choose the best verbiage, information, or data that applies to the encounter being documented. The particular verbiage or information selected by the clinician is added to or replaces the existing clinician entry in the medical record. The present invention can augment or seek additional information from the clinician to be able to translate the clinician's normal

documentation and/or augment the patient record to capture the clinician's thought process in order to be aligned with coding requirements. Thus, with the specific verbiage or information in the record, a medical coder will be able to better select the ICD codes that best describe the patient's condition.

The '176 patent discloses a method and system that merely elicits more complete information based on input and responses to questions. The '176 patent does not disclose the conversion of descriptive information into information for medical codes, which results in accurate medical coding and payment reimbursement. Additionally, the '176 patent does not disclose a method or system that encourages the user to enter more detailed information to obtain accurate medical coding. The '176 patent requires information with the outcome of providing medical treatment advice. On the other hand, the present invention clarifies and/or translates already entered information from the clinician to meet coding and reimbursement conventions to ensure that the most appropriate payment and/or reimbursement can be obtained. Furthermore, the '176 patent focuses on gathering information during the contemplation of obtaining or providing medical advice. In contradistinction, the presently claimed invention is focused solely on point of care information gathering (i.e., when the patient is in the hospital). In other words, the patient is already being treated and the clinician is gathering information for the treatment of the patient. Therefore, the presently claimed invention is different from the '176 patent.

In summary, the presently claimed invention seeks additional information

from a clinician at the point of entry of the information to be able to translate the clinician's normal documentation pattern and/or augment the patient record to capture the clinician's thought process or how the clinician arrived at certain conclusions in order to be aligned with coding requirements to obtain the appropriate level of payment. The present invention provides a method to interact with the clinician on a real time basis to allow the clinician to better translate the actual medical record entries and clinical impressions into the preferred verbiage or information and augment the entries to readily allow a Medical Coder to select the most appropriate ICD code under the given specific circumstances. The present invention obviates the need for any interventions after the fact in order to obtain information, which may have not been formally recorded in the medical record or articulated in terms consistent with coding regulations and rules. The system of the present invention is not one where the software or hardware automatically augments. There is always a clinical interface for the clinician to offer his or her opinion and agreement or disagreement with the recommendations. Such a system and related method are not at all disclosed or suggested by the prior art.

The remaining dependent claims pending in the present application are ultimately dependent upon at least one of the independent claims discussed above. No prior art reference makes up for the deficiencies of that reference as applied against the independent claims as no prior art reference discloses the characterizing features of the independent claims. Such a modification of the prior art derived at the present invention can only be made through hindsight after first revealing an

understanding of the present invention. Such use of hindsight to derive at the present invention is improper as a matter of law. Hence, it is respectfully submitted that all the pending claims are patentable over the cited prior art.

In summary, the presently pending application is now in condition for allowance, which allowance is respectfully requested. If any remaining issues exist, Applicant respectfully requests to be contacted by telephone at (248) 539-5050.

The Commissioner is authorized to charge any fee or credit any overpayment in connection with this communication to our Deposit Account No. 11-1449.

Respectfully submitted,

KOHN & ASSOCIATES, PLLC

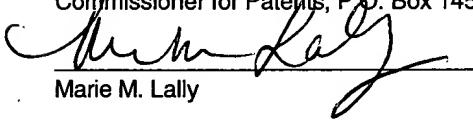

Andrew M. Parial, Reg. No. 50,382
30500 Northwestern Highway
Suite 410
Farmington Hills, Michigan 48334
(248) 539-5050

Dated: May 24, 2005

CERTIFICATE OF MAILING BY "EXPRESS MAIL"

Express Mail Mailing Label No: EV 659 078 085 US
Date of Deposit: May 24, 2005

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office To Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: Mail Stop: Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.


Marie M. Lally